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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,831	12/28/2000	Ernest H. Roberts	RTS 2 0017	8674

23717 7590 12/16/2003

LAW OFFICES OF BRIAN S STEINBERGER  
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COCOA, FL 32922

EXAMINER

VARNER, STEVE M

ART UNIT PAPER NUMBER

3635

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/750,831

Applicant(s)

ROBERTS, ERNEST H.

Examiner

Steve M Varner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 8,12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s)     is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 21, 25 is/are rejected.
- 7) ☒ Claim(s) 22-24 is/are objected to.
- 8) ☐ Claim(s)     are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on     is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on     is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No.    .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s)    .
- 4) ☐ Interview Summary (PTO-413) Paper No(s)    .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:    .

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 6, 7, 9, 11, 21, 25, are rejected under 35 U.S.C. 102(b) as being anticipated by Achen.

Regarding claim 1, Achen shows a solid sheet (60) having a sized portion, a utility wall plate (22) abutting a wall and covering a passageway through the wall, wherein the sized portion of the sheet (60) is adjacent to the utility wall plate (22), and a separate arthropod deterring component substance (24) is associated with the sheet.

Regarding claim 6, Achen shows an arthropod-deterring component substance (24) molded directly therein.

Regarding claim 7, Achen shows the arthropod-deterring component substance (24) applied therein.

Regarding claim 9, Achen shows the sheet (60) configured to circumscribe a passageway defined by an opening through the utility wall plate (22). (Fig. 3)

Regarding claim 11, Achen shows the opposing ends of the sheet (60) are substantially equal in length. (Fig. 3)

Regarding claim 21, Achen shows a sheet having a sized portion (60). Achen shows a wall (10) having a passageway through the wall; the sized portion of the sheet

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(60) being placed across a portion of the passageway. Achen shows a separate arthropod deterring component substance (24) associated with the solid sheet (60).

(Fig. 3)

Regarding claim 25, Achen shows a utility plate (22), the sheet (60) placed adjacent to one side of the utility plate (22). (Fig. 3)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, are rejected under 35 U.S.C. 103(a) as being unpatentable over Achen.

Achen shows the basic claimed structure. Achen does not show the sheet molded or extruded. It would have been an obvious design choice to make the sheet molded or extruded since molded or extruded are normal ways in which to make a sheet.

Claims 4, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Achen in view of Hawley's.

Achen shows the sheet is plastic foam (Col 4., Line 55-60). Achen does not show pliable or stiff. Hawley's shows pliable or stiff plastic foam (Page 227). It would have been obvious to one of ordinary skill in the art at the time the present invention

was made to use pliable or stiff plastic foam as in Hawley's in the structure of Achen depending upon whether a stiff or pliable sheet was desired.

### ***Claim Objections***

Claims 10, 22-24, 26-29, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 10 is allowable for the sheet (60) configured to circumscribe a passageway defined by a space between the utility wall plate (22) and the wall to which it abuts.

(Fig. 3)

Claim 22 is allowable for the pipe.

Claim 23-24 depend from claim 21 and are therefore allowable.

Claims 26, 28, are allowable for the arthropod deterring substance including a pesticide.

Claims 27, 29, are allowable for the arthropod deterring substance including a slippery substance.

### ***Response to Arguments***

Applicant's arguments filed 10/3/03 have been fully considered but they are not persuasive.

Applicant argues that his sheet is solid.

Examiner has changed the sheet from (30) to (60), which is solid.

Applicant argues that there is a separate arthropod deterring substance.

Examiner maintains that louvers (24) are separate and a substance.

Applicant argues that examiner must cite a specific reference to show the sheet molded, extruded, pliable, or stiff.

"Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

Molded or extruded do not need to be found.

Achen is made from plastic foam, which may be pliable or stiff.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sharples presents a retractable electric wall outlet assembly. Manak shows a plastic tree band. Carman reveals a tree trunk barrier for pest control. Ritter shows a rodent exclusion device.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-08390839. The fax phone

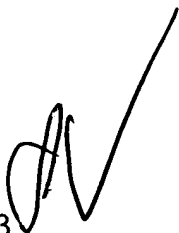
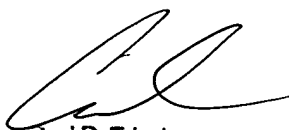
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numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV

December 4, 2003

A handwritten signature in black ink, appearing to be a stylized 'N' or similar character.A handwritten signature in black ink, appearing to be 'Carl D. Friedman'.

Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600